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United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,666

CIVIL.

M. M. MEREDITH, APPELLANT,

vs.

JOHN DEERE PLOW COMPANY OF MOLINE, ILLINOIS, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE ~~NORTHERN~~ SOUTHERN DISTRICT OF IOWA.

Printed Record

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[fol. 2] Petition

(Filed in U. S. District Court on March 9, 1936)

In the District Court of the United States
for the Southern District of Illinois,
Northern Division

M. M. Meredith, Plaintiff,
No. P1839 vs. Civil Action
John Deere Plow Co. of Moline, Ill., Defendant.

1.

The amount involved in this action exceeds three thousand dollars; and there is diversity of citizenship between the parties.

Plaintiff is an individual who lives at Atlantic, Iowa.

Defendant is a corporation with its principal place of business at Moline, Ill.

2.

In June 1924, defendant, as one member, and two certain retail stores, as the other member, were associated as the sole members of a certain business enterprise.

One of these stores was located at Atlantic, Iowa, and was identified by the name "C. P. Meredith, Atlantic, Iowa."

The other one of these stores was located at Griswold, Iowa; and was identified by the name "C. P. Meredith Griswold, Iowa."

3.

The objective of this business enterprise was to distribute the John Deere brand of farm implements among certain

limited class of individuals, to wit:—among such farmers as lived or farmed within the trade territories of said two stores.

As used in this petition, the term "distribute" identifies and includes acts of popularizing, selling, delivering, and servicing.

4.

In order for said business enterprise to function in a manner acceptable to both of its members, it was essential for each member to perform certain acts, consistently and faithfully.

Hereinafter said acts are termed "membership duties."

The said membership duties of defendant differed from the said member hip duties of these two stores.

5.

In June 1924, each of said members was performing its said membership duties consistently and faithfully, and said business enterprise was functioning in a manner acceptable to both of them.

[fol. 3] Also, in June 1924, defendant was urging its fellow member, said two stores, to make certain radical and fundamental changes in their long established methods of conducting their businesses.

Said stores were not obligated to make said changes; and defendant did not claim that they were.

In Appendix A, attached hereto, plaintiff has listed said proposed changes; and plaintiff hereby makes said Appendix A a part of this petition.

7.

Also, in June 1924, at Griswold, Iowa, defendant made a certain oral offer to plaintiff.

8.

Plaintiff was a third party. He owned no part of either one of said two stores. He was not a party to any agree-

ment or other arrangement by which said business enterprise had been created or in accordance with which it then was operating. He had taken no part in the making of any such agreement or other arrangement. He was not familiar with such agreement or other arrangement.

Defendant was aware of these facts at the time it made its said offer.

9.

Defendant's said offer was as follows:—Defendant offered that if plaintiff would advise said stores to make said proposed changes, and if plaintiff would exercise his authority and influence in such manner as would tend to cause said stores to make said proposed changes; then in exchange for plaintiff's performance of said services, defendant, throughout a certain definite and specified period of time, would continue to perform, consistently and faithfully, the aforesaid membership duties, which, as before alleged, defendant at that time was performing, consistently, and faithfully.

10.

In Appendix B, attached hereto, plaintiff has delineated the period of time specified in defendant's said offer; and plaintiff hereby makes said Appendix B a part of this petition.

11.

In June 1924, at Griswold, Iowa, plaintiff duly accepted defendant's said offer, orally.

12.

After said exchange of offer and acceptance had taken place, defendant represented to plaintiff that it held the [fol. 4] following belief:—defendant professed to believe that said exchange had had the effect of creating an agreement between itself and plaintiff—an agreement which embodied the provisions of defendant's said offer.

13.

Defendant at that time also urged plaintiff to proceed and to act thereafter upon the assumption that such agreement existed; and upon the assumption that defendant's future actions would be in accord with the provisions of said presumed agreement and with the provisions of its said offer.

14.

Thereafter plaintiff did proceed and act upon said two assumptions. Plaintiff would not have proceeded and have acted thereafter upon these two assumptions if defendant had made materially different statements to him at that time; or if defendant at that time had failed or refused to commit itself regarding said matters.

15.

Albert Ellsworth of Omaha, Neb. and L. R. Galiher of Atlantic, Iowa were the individuals who conducted said negotiations for defendant.

16.

Plaintiff has duly performed the services specified in defendant's aforesaid offer.

17.

Performance of said services caused plaintiff trouble and inconvenience. At the time plaintiff accepted defendant's aforesaid offer, plaintiff was under no prior obligation to perform said services. It was entirely ethical and proper for plaintiff to perform said services.

18.

The period of time specified in defendant's aforesaid offer has not yet expired. Despite that fact, defendant now is failing to perform any of its aforesaid membership duties.

19.

Defendant's said failure is inflicting loss and injury on plaintiff.

20.

Wherefore plaintiff charges:—

That the aforesaid exchange of offer and acceptance did, in fact, create an agreement. That, moreover, defendant is estopped from claiming that said exchange did not have the effect of creating an agreement. That said agreement [fol. 5] is legally valid. That plaintiff has duly performed his part of said agreement. That, at the present time, defendant is engaged in breaking its part of said agreement. That by its said breach, defendant, at the present time, is inflicting loss and injury upon plaintiff.

21.

One of defendant's aforesaid membership duties is to abstain from employing, or having any connection with, any method of distributing the John Deere brand of implements, among such farmers as live or farm within the trade territories of said two stores, other than a method which utilizes, for that purpose, said business enterprise, composed of defendant and said two stores.

22.

Another one of defendant's aforesaid membership duties is to make a certain accounting to and settlement with its fellow member, said two stores.

Said accounting and settlement is to be for all activities of a certain nature, in which defendant has been engaged or in any way connected with, and for which defendant has not made an accounting to and settlement with said two stores.

Said activities are all activities in any way connected with the distributions of the John Deere brand of farm implements among such farmers as live or farm within the trade territories of said two stores.

23.

Plaintiff asks that defendant be required to perform said two duties, above described, forthwith; and also be required to continue performing, consistently and faithfully, said duties throughout the period specified in defendant's said offer of June 1924.

24.

Plaintiff further asks that he be granted any and all other or additional rights and remedies to which he may be entitled.

M. M. MEREDITH,
Plaintiff.

301 West Sixth St.
Atlantic, Iowa.

[fol. 6] Appendix A.

The said changes which defendant was proposing to the said two stores were the following:—

(a) Said stores should gradually, but as rapidly as practicable, discontinue distributing other brands of farm implements which they then were distributing, and should, instead, devote all the time and efforts which they devoted to distributing implements—should devote said time and efforts to distributing the John Deere brand exclusively.

(b) Said Griswold store should increase the importance of the implement department of its business and should diminish the importance of other departments of its business.

(c) Said stores should make affirmative efforts calculated to merge their identities with the identity of the John Deere brand of implements to the end that the public eventually would come to regard these stores as being primarily "John Deere stores."

Appendix B.

The period of time specified in defendant's said offer of June 1924 was that period of time which would elapse prior to the occurence of one or other of the following three events:—

(a) Notification of said two stores by defendant, in good faith, to the effect that it intended to engage no longer in the occupation of distributing the John Deere brand of implements among such farmers as lived or farmed within the trade territories of said two stores.

(b) Notification of defendant by said two stores, in good faith, to the effect that they intended to engage no longer in the occupation of distributing the John Deere brand of implements among such farmers as lived or farmed within the trade territories of said two stores.

(c) Establishment by defendant that said two stores, or either one of them, had been seriously remiss or otherwise guilty of major fault in the performance of their, or its, membership duties.

[fol. 7] (Motion of Defendant to Dismiss, Motion of Defendant to strike and Motion of Defendant for more Specific Statement)

(Filed in U. S. District Court on April 9, 1956)

In the United States District Court
For the Southern District of Illinois,
Northern Division.

M. M. Meredith, Plaintiff,
File No. P-1839 vs. Civil Action
John Deere Plow Co. of Moline, Ill., Defendant.

Motion to Dismiss.

Comes now the defendant, John Deere Plow Co. of Moline, Ill. and moves the Court, as follows:—

1. To dismiss the plaintiff's complaint and the above entitled action for the reason [the] the complaint or petition

fails to state a claim or cause of action against the defendant upon which relief can be granted.

2. To dismiss the complaint and the above entitled cause of action for the reason that the complaint or petition is so vague and ambiguous that this defendant cannot reasonably be required to frame a responsive pleading.

3. To dismiss the complaint and the above entitled action for the reason that said complaint or petition fails to comply with Rule 8 (a) and Rule 8 (e) of the Federal Rules of Civil Procedure which require that the complaint shall contain a "short and plain statement of the claim, showing that the pleader is entitled to relief", and the further requirement that the complaint "shall be simple, [consise] and direct."

4. To dismiss plaintiff's complaint or petition for the reason that the cause of action sought to be alleged in plaintiff's complaint or petition herein has been fully and completely considered, decided and adjudicated against the plaintiff on substantially the same pleading. That plaintiff now seeks a new forum in attempting to re-litigate the identical issues decided in the two previous cases between the same parties.

See Meredith vs. John Deere Plow Co. of Moline, Ill. 89 Fed. Supp. 787 (March 30, 1950); affirmed by the United States Court of Appeals for the Eighth Circuit, 185 Fed. 2nd 481 (December 20, 1950); certiorari denied by the Supreme Court in 341 U. S. 936 95 L.Ed. 1364, 71 S. Ct. 856 (May 21, 1951.)

[Vol. 8] Also Meredith vs. John Deere Plow Co. of Moline, Ill., order of Dismissal by the District Court of the United States for the Southern District of Iowa, Western Division Civil 1-116 (Dec. 3rd, 1952); [affired] by the United States Court of Appeals for the Eighth Circuit in 206 Fed. 2nd 196, (July 31, 1953); certiorari denied by the Supreme Court in 346 U. S. 223, 98 L.Ed. 399, 74 S.Ct. 223 (November 30, 1953).

Also Meredith vs. John Deere Plow Co. of Moline, Ill et al., in the United States District Court for the Southern District of Iowa, Western Division, Civil 1-216, which plaintiff dismissed January 3, 1956, and Order of Dismissal entered January 13, 1956, immediately after plaintiff's Motion to Remand and before submission of defendant's Motion to Dismiss.

The Court in its order overruling the Motion to Remand took "judicial notice of the two previous actions instituted by plaintiff against the John Deere Plow Co. seeking redress for alleged breach of unilateral contract or agreement terminable at will and impossible of enforcement, and dismissed on orders by this court. See 185 F. 2nd 481, 206 F. 2nd. 196.

Continuing the Court said:—

"To attempt to differentiate the basic grounds existing, if any, between the present and the former proceedings or to give cognizance to the joinder of two citizens of Iowa as defendants other than mere nominal parties to the action would make a mockery upon the jurisdictional requirements herein."

Motion to Strike

Comes now the defendant, John Deere Plow Co. of Moline, Ill., and subject to the ruling of the Court upon the Motion to Dismiss moves the Court to strike each and all of the following matters for the reason all as hereinafter set forth:—

1. To strike all of plaintiff's complaint or petition, for the reason that the same is redundant, immaterial, impertinent and scandalous matter and violates the provisions of Rules 6 and 10 of the Rules of Civil Procedure for the District Courts of the United States and for the further reason that the complaint or petition of the plaintiff is so vague and ambiguous that this defendant cannot reasonably be required to frame a responsive pleading.

2. Subject to the ruling of the Court upon the previous portion of the Motion to Strike, this defendant moves the Court to strike each and every paragraph in said complaint [to] 9] of petition, and including Appendix A and B thereto attached, and that this motion shall apply to each and every paragraph and appendix separately, all for the reason that each of said paragraphs and appendix contain and are redundant, immaterial, impertinent, and scandalous matters and violate the provisions of Rules 8 and 10 of the Rules of Civil Procedure for the District Court of the United States.

Motion for More Specific Statement.

Comes now the defendant, John Deere Plow Co. of Moline, Ill. and subject to the ruling of the Court upon the defendant's Motion to Dismiss and defendant's Motion to Strike and as hereinafter set forth, moves the Court to require the plaintiff to make his complaint and petition more specific in each and all of the following matters, as hereinafter set out, for the reason that the complaint of the plaintiff is so vague and ambiguous that this defendant cannot reasonably be required to frame a responsive pleading:

1. That the plaintiff be required to set out whether or not the oral agreement claimed in plaintiff's petition was the only contract entered into with this defendant and if not set forth the terms of any such contract or contracts and if in writing to set out a copy or copies of any such contract or contracts.

2. That the plaintiff be required to state the date upon which he claims this defendant notified him or said stores that it would cease to perform its duties for said business enterprise and if such notice was in writing to set out a copy thereof.

3. That plaintiff be required to state the date upon which he claims the defendant ceased and refused to per-

form its duties for said business enterprise as alleged in palintiff's complaint or petition.

L. D. WILSON (by R. L. B.)

ROBERT L. BARRETT,
Moline, Ill. 1325 Third Avenue.

ABEL V. SHOTWELL,
1032-1042 Omaha National
Bank Bldg.
Omaha, Neb.

RAYMOND A. SMITH,
301-308 Park Building
Council Bluffs, Iowa.

Attorneys for Defendant.

[fol. 10] (Memorandum and Order of District Court sustaining Motion of Defendant to Dismiss and dismissing Cause)

(Filed in U. S. District Court on August 7, 1956)

United States District Court
Southern District of Iowa
Western Division.

M. M. Meredith, Plaintiff,
vs.
John Deere Plow Co. of Moline, Ill., Defendant.

This is the fourth action by the plaintiff against the defendant on the same general subject matter. The first was dismissed for failure of the complaint to state a claim upon which relief could be granted (89 Fed. Supp. 787) and that action was affirmed on appeal by the Eighth Circuit (185 F. 2nd. 481). The second was, likewise, dismissed for failure of the complaint to state a claim upon which relief could be granted (the Federal District Court's opinion is unreported) and that action was again affirmed by the Eighth Circuit (206 F. 2nd 196). Certiorari was applied for and denied by the Supreme Court in each of those cases (341 U.S. 936 and 346 U.S. 223). The third complaint (No. 1-216 in the District Court for the Southern District of Iowa), involved the same subject matter and, after the

overruling of the motion to remand to the State court from which removed, was dismissed by the plaintiff January 13, 1956. This action, the fourth one, was commenced in the Southern District of Illinois, Northern Division, and, on motion of defendant under Section 1404 (a), Title 29, U.S.C., was transferred to this Court.

Defendant has filed a motion to dismiss for failure of the complaint to state a claim upon which relief can be granted, and a motion to strike the complaint as redundant and immaterial and violative of Rule 8 and 10 of the Federal Rules of Civil Procedure, and, in the alternative, a motion for a more definite statement. These are the matters now before the Court, which, as well as the briefs of the parties, have been fully considered.

Even without the fortification of the prior decisions, it is crystal clear that this complaint attempts, by way of assumption and conclusion, to allege a contract (and its breach) that is void and unenforceable for (1) uncertainty, (2) lack of mutuality, and (3) because expressly, as alleged, terminable at will. Hence, the complaint fails to state a claim upon which relief could be granted.

It Is Therefore Ordered By The Court that defendant's motion to dismiss be, and is hereby, sustained and this action is dismissed. Done at Des Moines, Iowa, this 7th [fol. 11] day of August 1956.

CHARLES E. WHITTAKER,
United States Circuit Judge.
(By Assignment).

[fol. 12] Notice of Appeal

(Filed in U. S. District Court on September 4, 1956)

In the District Court of the United States
for the South Half of the State of Iowa
Western Division.

M. M. Meredith, Plaintiff,
File No. 1-225 vs. Civil
John Deere Plow Co. of Moline, Ill. Defendant.

The plaintiff in this action, M. M. Meredith, 301 West Sixth St., Atlantic, Iowa, Hereby gives notice that he

appeals to the eighth Circuit Court of Appeals from the order of this District Court which was entered of record on August 7th, 1956.

Said order is an order dismissing plaintiff's compiaint for the reason that same fails to state a claim on which relief can be granted.

M. M. MEREDITH,
Plaintiff.

M. M. Meredith, plaintiff,
301 West Sixth St.
Atlantic, Iowa.

Copies of Notice of Appeal mailed to Raymond A. Smith, 301-8 Park Bldg., Council Bluffs, Iowa, to Abel V. Shotwell, 1037 Omaha National Bank Bldg., Omaha, Nebr., and to Robert L. Barrett and L. D. Wilson, 1325 3rd Ave., Moline, Illinois, Attorneys for defendant, at Council Bluffs, Iowa, September 4, 1956.

E. E. POSTON, Clerk
U. S. District Court.
By Gladys Gretzer, Deputy Clerk

Filed in U. S. District Court September 4, 1956.

[fol. 13] (Relevant Docket Entries in United States District Court)

United States District Court
Southern District of Iowa
Western Division

M. M. Meredith, Plaintiff.
No. 1-235 vs. Civil
John Deere Plow Co. of Moline, Ill., Defendant.

1956
June 28 Filed Transcript of Proceedings from Southern District of Illinois, Northern Division, with original file containing —
a. Petition filed Mch. 9, 1956
b. Summons with Return filed Mch. 22, 1956

c. Motion to Dismiss, Motion to Strike, and Motion for More Specific Statement filed Apr. 9, 1956

d. Motion for Change of Venue filed Apr. 9, 1956

e. Copy of Docket Entries

f. Order of Transfer filed June 26, 1956

July 24 Filed copy of letter addressed to counsel, notifying them that pending motions to dismiss, to strike and for more specific statement, be submitted on brief written statements to be filed on or before August 7, 1956.

Aug. 4 Filed Memorandum Brief and Statement on behalf of defendant in support of Motions to Dismiss, to Strike and for More Specific Statement

" 6 Filed plaintiff's Argument objecting to defendant's Motion to Dismiss.

" 7 Filed Memorandum and Order of Dismissal. Whittaker, J. (2 OJ 351,352) Notice to counsel 8/8/56.

" 7 Entered Dismissal at plaintiff's costs. Whittaker, J. (2 OJ 352) Notice to counsel 8/8/56.

Sept. 4 Filed Notice of Appeal. Copies of Notice of Appeal mailed to Raymond A. Smith, 301-8 Park Bldg., Council Bluffs, Iowa; to A. V. Shotwell, 1037 Omaha National Bank Bldg., Omaha, Nebraska; and to Robert L. Barrett and L. D. Wilson, 1325 3rd Ave., Moline, Illinois, Attys. for Defendant. At Council Bluffs, Iowa, September 4, 1956. E. E. Poston, Clerk U. S. District Court, by—/s/ Gladys Gretzer, Deputy Clerk.

[fol. 14]

Sept. 4 Filed Appeal Bond. $250.00 cash as surety.

" 11 Filed Designation of Contents of Record on Appeal.

" 12 Filed Designation of Additional Portions of Record.